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7 The Honorable David G. Estudillo
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL J. SALVO,

Plaintiff,

v.

HORIZON AIR INDUSTRIES, INC., and ALASKA
AIR GROUP, INC.,

Defendants.

No. 2:21-cv-00430-JCC

STIPULATED PROTECTIVE ORDER

15 **1. PURPOSES AND LIMITATIONS**

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties hereby
18 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
19 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
20 protection on all disclosures or responses to discovery, the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to confidential
22 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
23 confidential information under seal.

24 **2. “CONFIDENTIAL” MATERIAL**

25 “Confidential” material may include the following documents and tangible things produced
26 or otherwise exchanged: any documents or information that contains secret or proprietary

27 STIPULATED PROTECTIVE ORDER

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1 information, treated as such by the party claiming confidentiality, and relating to its business or
2 organization, the business or organization of its affiliates or subsidiaries or any entity that has or
3 had a contractual relationship with it, its affiliates, or subsidiaries. It may include, without
4 limitation, financial information, aircraft leasing information, aircraft and equipment acquisition
5 information, budget planning, fleet information or planning, staffing and manpower strategy and
6 information, labor cost data, products, customer lists and other customer information, pricing
7 policies, employment records and policies, operational methods, strategic plans, marketing plans
8 and strategies, product development techniques or plans, business acquisition plans, new personnel
9 acquisition plans, methods of manufacture, technical processes, trademark, design and design
10 projects, inventions and research programs, trade "know-how," trade secrets, specific software,
11 algorithms, computer processing systems, object and source codes, user manuals, system
12 documentation, and personal information, where disclosure of that information would violate a
13 person's privacy, including, but not limited to, some information contained in employee personnel
14 files.

15 **3. SCOPE**

16 The protections conferred by this agreement cover not only confidential material (as
17 defined above), but also (1) any information copied or extracted from confidential material; (2) all
18 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
19 conversations, or presentations by parties or their counsel that reveal confidential material.

20 However, the protections conferred by this Order do not cover information that (i) was
21 publicly available through non-confidential sources prior to the commencement of this litigation
22 and without the breach of any applicable confidentiality obligations when produced to a party; (ii)
23 becomes publicly available through no fault of a recipient; or (iii) is developed by or on behalf of
24 a recipient independently of and without reference to any Confidential Material.

1 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
 3 or produced by another party or by a non-party in connection with this case only for prosecuting,
 4 defending, or attempting to settle this litigation, and for no other reason. Without limiting the
 5 foregoing sentence, confidential material may not be used by a receiving party in any other
 6 litigation, arbitration, or extra-judicial proceeding, whether such proceeding is between the parties
 7 or between the receiving party and a third party unless the parties agree to said use. Confidential
 8 material may be disclosed only to the categories of persons and under the conditions described in
 9 this agreement. Confidential material must be stored and maintained by a receiving party at a
 10 location and in a secure manner that ensures that access is limited to the persons authorized under
 11 this agreement.

12 Confidential material will be returned to the designating party or destroyed in accordance
 13 with the provisions of Paragraph 10 of this Order.

14 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 15 by the court or permitted in writing by the designating party, a receiving party may disclose any
 16 confidential material only to:

17 (a) the receiving party’s counsel of record in this action, as well as employees or legal
 18 associates of counsel to whom it is reasonably necessary to disclose the information for this
 19 litigation;

20 (b) the officers, directors, and employees (including in house counsel) of the receiving
 21 party to whom disclosure is reasonably necessary for this litigation;

22 (c) experts and consultants to whom disclosure is reasonably necessary for this
 23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the duplication of
 26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, in counsel interviews, or in preparation for their testimony,
4 witnesses in the action to whom disclosure is reasonably necessary and who have signed the
5 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
6 designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
7 depositions that reveal confidential material must be separately bound by the court reporter and
8 may not be disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a custodian or
10 other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or
12 referencing such material in court filings, the filing party shall confer with the designating party,
13 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
14 remove the confidential designation, whether the document can be redacted, or whether a motion
15 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
16 designating party must identify the basis for sealing the specific confidential information at issue,
17 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
18 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
19 the standards that will be applied when a party seeks permission from the court to file material
20 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
21 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
22 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
23 the strong presumption of public access to the Court's files.

24 5. **DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
26 or non-party that designates information or items for protection under this agreement must take
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1 care to limit any such designation to specific material that qualifies under the appropriate
 2 standards. The designating party must designate for protection only those parts of material,
 3 documents, items, or oral or written communications that qualify, so that other portions of the
 4 material, documents, items, or communications for which protection is not warranted are not swept
 5 unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 7 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
 8 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 9 and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated for
 11 protection do not qualify for protection, the designating party must promptly notify all other parties
 12 that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 14 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
 15 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 16 be clearly so designated before or when the material is disclosed or produced.

17 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
 18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 19 the designating party must affix the word "CONFIDENTIAL" to each page that contains
 20 confidential material. If only a portion or portions of the material on a page qualifies for protection,
 21 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
 22 markings in the margins).

23 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
 24 participating non-parties must identify on the record, during the deposition or other pretrial
 25 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
 26 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
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1 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
2 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
3 at trial, the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place on the
5 exterior of the container or containers in which the information or item is stored the word
6 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
7 the producing party, to the extent practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party's
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
12 in accordance with the provisions of this agreement.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must attempt to resolve any dispute regarding
21 confidential designations without court involvement. Any motion regarding confidential
22 designations or for a protective order must include a certification, in the motion or in a declaration
23 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
24 affected parties in an effort to resolve the dispute without court action. The certification must list
25 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
26 to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 2 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 3 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 4 persuasion in any such motion shall be on the designating party. Frivolous designations or
 5 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
 6 expenses and burdens on other parties) may expose the challenging party to sanctions. All parties
 7 shall continue to maintain the material in question as confidential until the court rules on the
 8 challenge.

9 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 10 **OTHER LITIGATION**

11 If a party is served with a subpoena or a court order issued in other litigation that compels
 12 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 13 must:

14 (a) promptly notify the designating party in writing and include a copy of the subpoena
 15 or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 17 the other litigation that some or all of the material covered by the subpoena or order is subject to
 18 this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 20 designating party whose confidential material may be affected.

21 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 23 material to any person or in any circumstance not authorized under this agreement, the receiving
 24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
 25 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
 26 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
 2 Bound" that is attached hereto as Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 4 PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain inadvertently
 6 produced material is subject to a claim of privilege or other protection, the obligations of the
 7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 8 is not intended to modify whatever procedure may be established in an e-discovery order or
 9 agreement that provides for production without prior privilege review. The parties agree to the
 10 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 **10. NON-TERMINATION AND RETURN/DESTRUCTION OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals, each receiving
 13 party must return or destroy all confidential material to the producing party, including all copies,
 14 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
 15 destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
 19 product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a
 21 designating party agrees otherwise in writing or a court orders otherwise.

22 **11. APPLICATION TO NON-PARTIES.**

23 This Order applies to all non-parties that are served with subpoenas in connection with the
 24 litigation or who otherwise produce documents, have their documents produced by a party, or are
 25 notified for deposition in connection with the litigation, and all such non-parties are entitled to all
 26 of the protections and rights afforded hereby to the parties.

1 **12. RIGHT TO ASSERT OTHER OBJECTIONS.**

2 By stipulating to the entry of this Order, no party waives any right it otherwise would have
3 to object to disclosing, producing, or the admissibility of any information or item on any ground.
4 The parties shall not use this Order to support a waiver argument in any discovery motion, or to
5 argue that any Party waived its objections to produce or have any particular documents or
6 information admitted.

7 **13. NON-WAIVER OF PRIVILEGE**

8 Pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall
9 not, for the purposes of this proceeding or any other proceeding in any other court, constitute a
10 waiver by the producing party of any privilege applicable to those documents, including the
11 attorney-client privilege, attorney work-product protection, or any other privilege or protection
12 recognized by law.

13 **14. WAIVER**

14 The parties may agree in writing to waive portions of this agreement as to the material and
15 testimony produced between them.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED this 21st day of October, 2021.

18 T.M. Guyer and Ayers & Friends, P.C.
19 Attorneys for Plaintiff

 Davis Wright Tremaine LLP
 Attorneys for Defendants

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
5 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
7 documents, including the attorney-client privilege, attorney work-product protection, or any other
privilege or protection recognized by law.

8 DATED this _____ day of October, 2021.
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The Honorable David G. Estudillo
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Michael J. Salvo v. Horizon Air Industries, Inc., et al.*, Case No. 3:21-cv-00430-JCC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

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